

THE LABOUR COURT
LANSDOWNE HOUSE
LANSDOWNE ROAD
BALLSBRIDGE
DUBLIN 4
D04 A3A8



AN CHUIRT OIBREACHAIS
ÁRAS LANSDÚN
BÓTHAR LANSDÚN
DROICHEAD NA DOTHRA
BAILE ÁTHA CLIATH 4
D04 A3A8

TEL: (01) 613 6666
FAX: (01) 613 6667

EMAIL: INFO@LABOURCOURT.IE
WEBSITE: WWW.LABOURCOURT.IE

CD/19/59

RECOMMENDATION NO. LCR21901

INDUSTRIAL RELATIONS ACTS 1946 TO 2015
SECTION 26(5), INDUSTRIAL RELATIONS ACT, 1990

PARTIES :

HSE, DEPT HEALTH, DEPT PUBLIC EXPENDITURE & REFORM

- AND -

SERVICES INDUSTRIAL PROFESSIONAL TECHNICAL UNION

DIVISION :

Chairman : Mr Foley
Employer Member : Mr Marie
Worker Member : Ms Tanham

SUBJECT:

1. Recruitment and Retention

BACKGROUND:

2. This dispute came before the Labour Court in accordance with Section 26(5) of the Industrial Relations Act, 1990. A hearing took place on the 11th of February 2019.

RECOMMENDATION :

This matter comes before the Court following the Court's exercise of its statutory function as set out in Section 26(5) of the Industrial Relations Act, 1990 whereby, no

party having requested an investigation of the dispute by the Court, the Court is of the opinion that there are exceptional circumstances which warrant the Court investigating the dispute. The Court has come to such conclusion taking into account the grave and extensive implications of the dispute and the substance of the extensive briefings provided to the Court by the employer and Trade Union in recent days.

The Public Service employers made clear to the Court that any resolution of the within dispute must take place within the framework of the Public Service Stability Agreement (PSSA) which is a collective agreement dealing with a comprehensive range of issues and to which both of the parties before the Court are a party. That agreement expires in 2020. The Trade Union has also made clear to the Court its acknowledgement that the resolution to the within dispute must be found within the framework of the PSSA.

The Court, consequently, has considered all aspects of the dispute between Public Service Employers and the SIPTU in the context of the PSSA.

Having given careful consideration to the written and oral submissions of the parties to the Court at its hearing the Court makes the following recommendations.

The Court understands that both parties will give comprehensive consideration to this Recommendation and that the SIPTU will, in the context of that consideration, give immediate consideration to the possible suspension of industrial action while this Recommendation is under consideration.

1. Delivery of enhanced practice in nursing and midwifery

The Court is advised of a range of tangible and specific enhanced nursing practice measures that in the view of the Court constitute the basis for a fundamental change in the role of the Staff Nurse, which could be regarded as phase one of the development of nursing. This requires the development of a new Enhanced Nurse Practice salary scale. This will begin a process of transformation of the profession which will be continued in future public pay agreements.

To underpin this new arrangement, a new nursing contract focused on the delivery of improved patient and service delivery outcomes should be finalised within three weeks of the date of this Court hearing. The following measures should be implemented in this context:

1. Contract change – part of the new contract will be to shift work to the community and support implementation of new approaches to chronic condition management. The contract will also support the implementation of Sláintecare and other health strategies associated with the development of community services;
2. The Parties agree to flexibility and assessment of rosters in the context of the Framework on Safe Staffing;
3. Review staffing and skill mix in all areas including ambulatory and outpatients areas. Facilitate nurses focusing on the assessment and delivery

and delegation of care;

4. The Parties support the implementation of integrated care organisations;
5. The Parties will cooperate fully with the implementation of the Health Care Assistant (HCA) review.

As part of the roll out of these productivity measures, provision will be made for an Enhanced Nurse Practice salary scale. Nurses with certain qualifications will be offered the opportunity to migrate to this new scale. The final details are to be worked out as part of the new contract discussions referred to above. The detailed arrangements in relation to the assimilation of staff to the new scale are set out below.

The productivity measures set out above will apply to all nurses on this new Enhanced Nurse Practice salary scale. Nurses who remain on the existing contract will continue to remain on the existing nursing scale.

The costs associated with this measure will be funded in the following way:

- (1) Under the PSSA there is a cost of new entrant amelioration assigned to the nursing and midwifery profession. The alteration of those arrangements for nursing and midwifery provided for in this Recommendation will produce savings which will be assigned to significantly reduce the prospective cost of nurses migrating to the proposed Enhanced Nurse Practice scale.
- (2) There will be reductions in spending on agency staff in nursing and midwifery as a result of the roll out of the Safe Staffing Framework referenced at (3) below. The employer will attribute specific reductions in agency spending consequent on the implementation of this matter.
- (3) The proposed productivity measures outlined above are designed to transform the operation of nursing. The parties are satisfied that this will lead to better and safer patient care. There are also additional quantifiable benefits to these approaches. The estimates of these quantifiable benefits should be finalised in the context of new contract discussions.

The Court understands that the delivery of these productivity measures and the migration of staff will, in the opinion of the parties, lead to the delivery of significant savings. This will be subject to an independent verification mechanism under the auspices of the Court. Failure to deliver these verifiable savings by the end of 2019 will lead to a pausing of the roll out of this initiative. The parties to this agreement will reconvene to examine this structure in the event of failure to realise these savings.

2. Expert Review of Nursing Profession

In the context of the significant planned reform of health services as referenced in the report of the Public Service Pay Commission (PSPC) published in August 2018, the Court recommends that an expert review of the nursing profession should be undertaken over the medium term and in any event to be completed during the lifetime of the PSSA. The outcome of that review can serve as an input to any future engagement between the parties to the PSSA as envisaged by the PSPC in Page 7 of its

report. This input should inform the discussion on any new pay agreement on the expiration of the PSSA.

3. Other Measures

The Court recommends that the following issues of concern to the union side should be addressed as part of the resolution of this dispute as follows:

- The implementation of the outstanding RNID (Registered Nurse Intellectual Disability) element of the 2017 Workplace Relations Commission agreement on recruitment and retention.
- Inclusion of Public Health Nurses in midwifery services in the extension of the Location/Qualification allowance proposed by the Public Service Pay Commission.
- Existing allowances where applicable will continue to apply to all scales including the new Enhanced Nurse Practice salary scales.
- The employer has set out a framework for the national roll-out of the Safe Staffing and Skill Mix Framework in medical and surgical care and Emergency Department areas in acute hospital settings. This framework should be implemented by the end of 2021. The employer should commit that the funding necessary for the implementation of this already stated policy will be a specific element of funding for the Service plan in those three years and thereafter.
- The HSE and the Department of Health should, as recommended by the PSpC, review the anomaly identified by the PSpC (page 72 of its report) related to the banding of hospitals.
- The parties should accept that implementation of phase one of the development of nursing as provided for in this Recommendation will require continuing training support and that the expert review of the nursing profession as provided for in this Recommendation will similarly require professional development of nurses. In addition, the developing regulatory framework in respect of continuous professional development in the profession will place demands on nursing.

The accommodation of training and professional development in all of these contexts should be addressed specifically by the expert review of the profession.

- The union claim in respect of the Clinical Nurse Manager 1 grade (CNM1), the Clinical Nurse Manager 2 grade (CNM2) and community nursing grades cannot be accommodated in phase one of the development of the profession as set out in this Recommendation but should be examined by the expert review of the profession provided for herein.
- The development of the profession arising from this Recommendation and the

work of the Expert Review Body will, in the view of the Court, have implications for the management of nursing and consequently the Expert Review Body should examine in particular the effects on the management grades of Clinical Nurse Manager 3, Assistant Director of Nursing (ADON) and Director of Nursing (DON).

- The employer has underlined its commitment to the accelerated national roll-out of the Safe Staffing and Skill Mix Framework in Medical and Surgical care and Emergency Department areas in acute hospital settings over the coming three years.

In tandem with the roll out of the Framework, the number of Advanced Nurse Practitioners (ANP) should be increased, moving to a minimum of 2% of the nursing workforce.

- The Court notes the PSPC's stated view in its August 2018 report that "*there is a case for providing additional incentives for qualified nursing and midwifery staff to remain in the public health service*". This Recommendation addresses many of these concerns. In addition, and consistent with the PSPC's view, the Court recommends that the Location/Qualification Allowance be extended to nursing and midwifery staff working in medical and surgical areas. This extension will be subject to a maximum full year cost not exceeding €10m. This will support the accelerated roll-out of the Taskforce on Safe Staffing and the necessary recruitment and retention of sufficient skilled nursing staff to underpin this policy.

4. Revision of the New Entrant Measure

- The New Entrant agreement under the PSSA provides for accelerated increments at point 4 and point 8 of all entrant scales.
- The cost associated with the nursing and midwifery component of the new entrant deal is over €30m, of which €23m falls in the first two years.
- As part of this Recommendation the new entrant measure should be revised as follows for nurses and midwives. In future nurses and midwives will skip point 2 and the savings compared to the original proposal will offset the cost of the migration of Staff Nurses/Midwives to the Enhanced Nurse/Midwife Practice Scale.

The Court notes that the Employer recognises that other parties to the PSSA may wish to explore possibilities of this nature within the available financial allocations, but such considerations are outside the remit of the Court in the context of the within dispute.

5. Migration of Staff to Enhanced Nurse Practice Salary Scale

- The option of migration should become available on 1st March 2019. The benefits

for nurses will accrue on reaching their annual increment point. Migration to enhanced incremental points will commence following the successful conclusion of contract discussions.

- Staff on points 1-3 remain on the Staff Nurse/Midwife scale and benefit from the revised new entrant measure.
- Once they reach point 4 on the Staff Nurse/Midwife scale they can migrate to the Enhanced Nurse/Midwife Practice scale if they meet the qualifying conditions.
- Staff on points 4-13 of the Staff Nurse/Midwife scale will migrate to the Enhanced Nurse/Midwife Practice scale.
- Staff on the Senior Staff Nurse/Midwife will transition to the Senior Enhanced Nurse/Midwife Practice scale (SENP).
- Assimilation to the Enhanced Nurse Practice scale will occur for each individual on their increment date.

In general, assimilation on that date will be on the basis of application of the increment on the existing Staff Nurse Scale on the incremental date and assimilation to the nearest cost point upwards on the Enhanced Practice Scale immediately thereafter on that date.

Point	Enhanced Nurse Practice Scale
1	€35,806
2	€38,062
3	€39,265
4	€40,191
5	€41,212
6	€42,570
7	€43,893

8	€45,841
LSI	€47,201

SSEN	€49,471
------	---------

Signed on behalf of the Labour Court

Kevin Foley

TH
11 February 2019

Chairman

NOTE

Enquiries concerning this Recommendation should be in writing and addressed to Therese Hickey, Court Secretary.